S.B.Criminal Misc. Petition No.239/2005
(Bhagwati Prasad Soni vs. Smt. Manju & Ors.)

Date of order : 18.7.2006

HON'BLE MR.H.R.PANWAR,J.

Mr.Arvind Samdaria, for the petitioner.
Mr.Sanjeev Sharma, for non-petitioners.

Heard learned counsel for the parties.

By the instant criminal misc. petition, the petitioner has challenged the order dt. 10.1.2005 passed by Judge, Family Court, Jodhpur (for short 'the trial court' hereinafter), whereby the trial court granted interim maintenance during the pendency of the application filed by the non-petitioners under section 125 Cr.P.C. It has not been disputed that non-petitioner No.1 is a legally wedded wife of the petitioner and non-petitioners No.2 to 4 are the daughters born out of the wedlock of the petitioner and non-petitioner No.1. The trial court on the basis of pleadings, granted interim maintenance.

Learned counsel for the petitioner submits that granting maintenance from the date of application is erroneous. He also submits that the income of the petitioner is Rs.3000/- as stated

in the reply to the application u/s 125 Cr.P.C. and, therefore, the maintenance awarded by the trial court is excessive. In the application, the non-petitioner pleaded that the petitioner earns Rs.15,000-20,000 per month as he is a goldsmith for last 20 years. The income of the petitioner has to be decided by the evidence, which yet to come before the trial court. The trial court granted maintenance only on the basis of pleadings of the parties and, therefore, it is an interim arrangement and in any manner cannot be said to be erroneous. So far as maintenance from the date of order is concerned, a Division Bench of this Court in Smt. Savita Sharma vs. Shri Krishan Murari, **1990 (1) RLR 400** held that the maintenance should be from the date of application. In this view of the matter, I do not find any merit in the misc. petition.

The cr. misc. petition is accordingly dismissed. The trial court is directed to decide the main application under section 125 Cr.P.C. utmost expeditiously.

Ad interim stay order dt. 4.3.2005 is vacated. Stay petition also stands dismissed.

(H.R.PANWAR),J.

m.asif/-